
THE UNIVERSITY OF MICHIGAN
LIBRARIES
THE UNIVERSITY OF MICHIGAN
1817


THE UNIVERSITY OF MICHIGAN
LIBRARIES
THE UNIVERSITY OF MICHIGAN
1817

Thomas Charles Grandison, d. 1879.

**HEREDITARY PROPERTY JUSTIFIED.**

---

# REPLY

TO

# BROWNSON'S ARTICLE

ON THE

# LABORING CLASSES.

BY ONE, WHOSE PERSONAL EXPERIENCE SHOULD ENABLE HIM TO FEEL THE WANTS, AND SYMPATHIZE WITH THE CONDITION, OF THE LABORER.

"Suum cuique tribuito." — Cic.

CAMBRIDGE PRESS:
METCALF, TORRY, AND BALLOU.
M DCCC XLI.

# HEREDITARY PROPERTY JUSTIFIED.

---

An article has lately appeared in the Boston Quarterly Review, upon the condition of the "Laboring Classes," which, from the nature of its subject-matter, has attracted much attention. Some of its doctrines we propose to discuss in the following pages.

The interest of the common laborer, — in the popular meaning of the term, — must be intimately connected with the prosperity of every country, and constitute one of the primary objects of the peculiar care of government. And in these trying times, when the spirit of reform is sweeping over society, and past institutions are called to render up their last account and give place to a new era; when false distinctions are fast passing away; when every individual begins to be seen in his true position, his rights to be more thoroughly recognised, and his claims placed on his substantial merits; should we not expect that the laborer would find a fit representative, able to vindicate his title to his true share of the fruits of industry and social blessings? Have these expectations been realized in the Journal before us? This we propose to determine.

We will endeavor to meet the author on all the material points in his lengthened discussion, conceding the others. We may do this without any prejudice to the few questions of vital importance, which we shall raise, put in issue, and endeavor to determine. Before submitting unconditionally to the direction of any one, whatever his talents, age, or experience, it is fit to examine well the foundation of his opinions, try the strength of his positions, and endeavor to know, at all points, our leader, where he is, whence he departs, and whither he would conduct us. We have rights

of this sort, even in dealing with age and experience, and can assert them without the charge of impertinence.

If the present era is to be tasked with the emancipation of labor, the author is correct in his choice of a place which combines the most advantages for working out his predicted ameliorations; in designating for the purpose this country, the land of enterprise and free institutions, which, in principle and practice, acknowledges less allegiance to the wisdom and learning of the past, than almost any other country, and is now testing before the world, many, as yet, untried experiments in government, affecting the condition of every class of the community. Here, if anywhere, industry may be supposed to meet its reward, and be secured in its natural and rightfully acquired advantages.

This, to a great extent, is in fact admitted to be the case; and what is the result, notwithstanding all our boasted equality of civil position? Wherever we turn our eyes, we meet in every direction great inequality of private fortune; here a splendid palace with all the luxuries of life, there a wide waste of wretchedness and poverty. Shall we investigate this startling phenomenon of civil society? or merely join in the declamation of most who have treated the subject?

Is this disparity, as the author would have us think, all to be set down to the account of the errors of government, and the false systems of morals and religion, into which we have unfortunately fallen, and by which we have long been enslaved? Or is the true origin behind the mere technical forms of institutions? We are very willing to recognise the cause and the remedy, to which candid and philosophical investigation may direct us. And we can only say, if this severe charge is justly imputed to the civil and religious institutions, as at present organized and administered in this country, it is an argument which strikes essentially at their merits and claim on our veneration. But more of this in its proper place.

We trust that a thinking and practical man will find, that the root of much of this lamented inequality in our condition lies far deeper than the organization and the technical forms of society, or civil and religious institutions. If society is answerable for all this, to what a severe account must she be brought! The charge might be decisive against her right

to existence; for it is notorious that in every country where she performs her functions most faithfully, and government approaches nearest to a perfect system of remedies for social evils, there this disparity is most apparent; and in proportion as the bonds of society become weakened, and she forsakes her high trusts, bringing us with disorganization back towards our primitive state, we draw the nearer to equality of condition.

Is it generally considered how great a barrier to an equality of condition is set up in our original constitution, though fundamentally the same? Here is found, quite independent of all external facilities furnished by society, every variety of capacity and disposition to better our worldly condition, which, even had they equal scope for exercise and development, with theoretical and practical perfection in civil and religious institutions, would make inequality of condition commensurate with every step of our advancement in life. And who has any objection to a comparative inequality, provided the condition of each be positively bettered in proportion to his industry and desert? The very nature of society is, that the nearer it approaches to perfection in the same proportion, it succeeds in securing to each individual member free and equal scope, to turn his native or acquired capacity to the best possible account. So that if men be unequal in the beginning, that inequality must increase as they advance, though the condition of each may be positively bettered.

And this is not mere theory, but verified in fact; for it is universally admitted, that the common laborer is now better clothed, better fed, and enjoys more of the conveniences and luxuries of life, than a prince of the primitive ages in some countries.

Why, at all, and independent of external facilities, a certain inequality must inevitably exist, is a question not falling within the scope of philosophical inquiry, which, strictly speaking, can never account for an ultimate fact. In this, as in numerous other instances, it becomes us to rest quietly in the supposition of our inability to penetrate the hidden purpose, rather than make the vain attempt to criticise creation by our ideas of fitness.

Thus, without meaning to charge too much upon the infirmities of human nature, it is not difficult to trace in our

original constitution the real cause, original intention, and the justice of a degree of inequality in apportioning the fruits of industry and means of social enjoyment, — and this consistently with perfect equality of rights, and scope to make one's industry productive, though these rights, in their exercise, result in diversities of emolument from the proceeds.

What is the true rule in apportioning the fruits of toil? Is it based on an undefined levelling principle, which divides the community into opposing factions, who do not understand their real points of difference? Need the author be informed, that this rule is not to be determined or modified essentially by the arbitrary will of legislators? It is antecedent to all government, paramount to all civil authority. It is the rule which God has established, by fixing in the mind of every man an eternal and unalterable connexion between industry and the exclusive enjoyment of its rightfully acquired fruits, — without any regard to the comparative amount of possessions that might thus accrue to each individual. Every deviation from this principle is a direct departure from the legitimate object of all government; and, indeed, in this country, so far from securing equality of rights, it would involve gross injustice, and only tend to secure equality of things to which those equal rights attach. Would any one thus pervert the principle of equality, which lies at the basis of our government, and on the right practice of which, we found our best hopes of social happiness?

Government has no power in this matter; it is quite limited in the legitimate sphere of its operations, and out of this we ask nothing from it. We do not admit the right insisted on by the author, to use it as an instrument wherewith to break the human race into the practice of his theoretical reforms. Government can provide for but comparatively few of the wants of human nature, and to attempt more would defeat its own ends. It furnishes, at best, but imperfect redress for many injuries to our person and property. In its true place it is our servant, not our master.

But the author would, even at the expense of some consistency with the general spirit of his writings, have us to think, from this article on the laboring classes, that it is omnipotent; can regulate the transfer of private property at pleasure; determine the nature and extent of our do-

minion over it; nay, that individual and personal rights should he completely drowned in the overwhelming power of state, which should extort from parental care the guardianship of children, determine the mode of their education, and wring from the hand of industry the necessary means of carrying into effect these strange prerogatives. We acknowledge no such rights in government, excellently as it is organized and administered in this country.

Could it perform its mission better, we would not object to an essential change in the nature of government. Instead of being a mere instrument of preventing wrong and dispensing justice, let it become a parent, a philanthropist; let it attempt to recognise and enforce all obligations binding in morals, and required merely upon reasons of generosity, charity, and benevolence. Who, that is at all acquainted with the first principles of jurisprudence, need be informed, that government, by endeavoring to extend its remedial justice beyond cases of manifest and specified injury, with a view to enforce all these obligations, would become a thing perfectly impracticable; as it would be difficult to say when a person by its laws was punishable, or rather to say, that he ever was not punishable. I may offend in morals and religion in not postponing farther investigation into this subject, till I have hastened into the streets, hunted up an opportunity of performing some philanthropic, charitable, or benevolent act; but will the author pretend to say, that human government can punish such an offence? No. Civil government supposes, in the case of each individual, a perfectly separate and independent dominion over his own affairs, with which it does not and cannot interfere. To parental affection are intrusted the care and protection of children; the principle of self-interest imposes obligations to accumulate wealth, and the means of bettering one's condition.

It requires something more than the mere assumption of the time-honored name, *Democracy*, to give currency or any shadow of value to such doctrines in the author's political creed.

We admit, to the fullest extent, the obligation of government to secure, as far as possible, that degree of equality, which would prevail, if each citizen were allowed free and equal scope for the exercise and development of whatever power he possesses to better his condition.

We trust, that our country will vie with any other in the degree of approximation to this point, though some of its measures in this respect may not be able to stand the test of severe criticism. But, for justice' sake, be it said, that its policy has always been, to endeavor to realize its objects, by carrying out, rather than forsaking first principles. If it has extended unequally its protection to the different branches of industry, or furnished inadequate redress in any instance, it has been from infirmities incident to all human governments, rather than from wilful abuse of civil authority.

We are not aware of any partial or exclusive legislation, giving an unjust preference to any class, or favoring unequally any branch of industry, farther than is necessary for purposes of national security, or of unquestionable public utility. Whenever the pressure of any law has been found to bear very unequally upon different classes of the community, the remedy has usually been found in a repeal or amendment; and thus individual industry has been relieved from unjust restraint. We do not, however, pretend to justify, here, to the fullest extent, existing inequalities of private fortune, nor to say, that they may not have been in a degree favored by the errors of government, nor that undue advantages have not been taken of its just provisions. But we entirely reject the author's method of curing the evil, by a rapacious distribution of the rightfully acquired fruits of industry, — which, were it practicable, would lay a great restraint on the production of wealth, subjecting a portion of what was produced to purposes of gross injustice, in wanton violation of the sacred right of property.

Government may remove all restraint from individual industry, and leave entire freedom in the field of enterprise; but it cannot go beyond this, and quicken industry, nor increase individual capacity to render it productive. It has, as we conceive, no power, in contemplation of any notion of equality, to enforce an arbitrary rule of apportionment, or materially control the express or implied just intentions of the rightful owner relative to the distribution of his property, or recognise any other rule than that of securing to each individual the fruits of industry according to his just acquisitions, and service in production.

Is this rule of apportionment to each, according to his productive service and rightful acquisition, to be realized

by the means prescribed by the author; — to wit, by restraining production in making each individual toil for wealth to be appropriated not for his own use, but to the service of the state; — by substituting, for his present exclusive enjoyment of the fruits of his industry to his own use, and the use of his children after him, merely the permission to the latter to come in under a dividend, and take their equal share with the stranger; — by substituting philanthropy for the free operation of the principle of self-interest; — by taking away the power of alienation by devise, instead of subjecting it and the owner's entire dominion over his property merely to such restraints, as may be imposed by principles of natural justice, and paramount obligations to other individuals and to society?

Subject to such restraint, the weight of authority and the practice of all ages go to prove, that property should, by right, be at the free disposal of the owner, in whose hands it is liable to the discharge of all civil obligations, and just demands, as well as bound to furnish compensation for all injuries, which its accumulation, possession, or distribution may occasion to any other person, or to society; and it continues subject to these liabilities, into the hands of whomsoever it happens to fall, either by devise, or any other mode of conveyance.

I would ask the author, then, how the acquisition, possession, and disposition of a fortune, however great, by one individual, whose right of property is thus modified and restrained, can possibly prejudice another, however poor; or even to show, that it would not, generally, be a positive advantage to the latter. And if the owner injures no one, positively or negatively, and so incurs no liability to compensate for any injury, whence the power of government to control the intentions or modify, at all, the owner's disposition of it? Can society ask more than justice? Above all, can it say, that a moment before death, one's dominion over his property is not as complete as at any other time, and that then, though at every other period in life he might convey it, he shall not have the power of transferring, either by parol or parchment, to his children, or to A., B., and C.? Does he thereby injure others? Not at all; for he leaves them precisely as he found them. If not to give is to injure, then who is not guilty? And if he does thereby injure

others, has he not a right to call for a specification of persons, and the amount that thus must be indemnified in damages? Will you, by a sort of summary process, require his whole fortune, without any regard to the nature and extent of the injury committed, to be thrown into the hands of society, to be distributed, throughout the community, to individuals, with whom he has never had any connexion, and who do not even know of his existence? This is, truly, a new method of administering justice, and one which will ever be confined, as we trust, to the imagination of such as the author. Who would, however destitute he might be, consent to be enriched on such spoils?

Admit the owner should be generous, philanthropic, and benevolent, as well as just, yet such obligations, however valid in morals, are not binding in contract, therefore not to be enforced by civil authority. For the faithful discharge of these duties, he is answerable only to a higher tribunal than human government.

But not to rest with these general views of the subject. Since these strange doctrines of social reform are entertained and inculcated by a man of some talents, they deserve a thorough investigation, and require to be met with every possible objection, that they may rest upon nothing but their merits.

In the author's view of the subject of the descent of property, he denies that the claims of kindred and blood confer any peculiar rights. Here he directly opposes, not only the promptings of human nature, but the authority of all the greatest jurists of every age and country, who, however much they differ in other respects, all concur in the opinion, that the claims of kindred and blood impose on the husband an obligation, binding in natural justice, to make provision for his wife, parents, and above all, for his offspring, whose wants, by the fact of birth, he has occasioned, and who are considered as having a claim upon his property, though their claim must be postponed to that of the creditor; for justice is paramount to the claim of humanity. Now all the claims of creditors being satisfied, and all civil obligations discharged, to what portion of the residue does the claim of children extend? Their right to sufficient for subsistence, and parental aid, till they become able to provide for themselves, is dictated by the law of nature. This is required of

the parent even in a state of nature, before industry has given birth to property. But natural justice, or enlightened conscience, requires, that the obligations of the parent, with reference to his children, should change with his increased ability to advance their well being. If this is not so, then the parent is only bound to satisfy their physical wants; and to provide for moral and intellectual culture is not embraced within the sphere of parental duties. Yet, that there may be some limits set to the amount of parental aid required, even in conscience, is unquestionable. The moral law sets one bound; civil government, another. Society can only draw some clear and practical line of distinction, and that is, that the parent shall confer no exclusive benefit on his children, which occasions, positively or negatively, any injury to others, capable of specification and judicial remedy. We contend, that there is no civil obligation to prevent the rightful owner from giving his children the whole of his fortune, however great the amount, after the discharge, or subject to the discharge, of all lawful demands upon it, for the following reasons;

If any one else has any claim upon this property, it must be for one of two reasons, applicable alike to government and individuals.

1st. That some good or valuable consideration has been given for it.

2d. Some injury has been sustained, for which redress may be sought in damages.

On what does government found its right to appropriate it to its own use, or distribute it upon any principle, other than that of carrying into effect the express or implied rightful intentions of the owner? Can it allege, in support of this claim, the price of protection during its accumulation? This demand has been yearly discharged in the form of taxes, to which the property is still liable, into whose hands soever it may happen to fall. Has the owner done any injury to society? For this he has either forfeited it, as in case of treason, or for lesser offences is liable in damages. These two demands, together with the expenses of government, measure the extent of the liability of our property to the claims of government. And subject to these, if society does not plunder it, there is nothing, so far as respects government, to prevent an exclusive appropriation to the

satisfying of all the wants of the owner, and to the accomplishing of his express or implied rightful intentions. Such a power of appropriating property being the leading motive of its creation, can alone, under the above limitations, justify the title of children under a conveyance of it to their use, so long as the human mind recognises an inseparable connexion between industry, rightful production, and accumulation, and the exclusive enjoyment and rightful appropriation of its fruits.

If, then, the lawful intentions of the owner be well expressed, they should thus far be carried into effect; if they be not expressed, or clearly implied, then the law, true to the spirit, not the letter merely, cannot, as the author would have us think, take advantage of the mere omission; but must, as in fact it does, make reasonable implications, and let the ties of kindred and blood affect the distribution of one's possessions; and it properly enough supposes an intention to distribute all the residue, after the discharge of liabilities, to the wife, children, and next of kin. Hence the statute of distributions. And this with good reason; for the owner is supposed to be true to the impulses and affections of human nature, which as powerful incentives, by giving birth to property, (and to no purpose, but to aggravate or disappoint the producer, if he should not be allowed to dictate its distribution,) establish, in the absence of every other claim, an undisputed right in the owner to appropriate the same to the exclusive use of the objects of these natural affections. Any advantage it confers on them, must of course, work no detriment to others.

2. What claim has any other individual on this property? Did he contribute anything towards its production without compensation? No. Has he sustained any injury in consequence of its accumulation, possession, or distribution? If so, then his action lies in damages. Has he given any good or valuable consideration? No. On, what principle, then, does he found his claim to any portion, if, in the rightful exercise of the owner's dominion over his property, he is neither made, nor can reasonably be supposed to be made, a beneficiary? Shall he, through the author's fondness for equalization, be enriched without any shadow of title whatever, when he was not injured by its accumulation, and is secured from all damage resulting from its future posses-

sion, and when he is not an object of those kindred ties, which, by occasioning the existence of property, establish, other things being equal, the justice of a title to its ultimate enjoyment? Sympathize as we will with those not falling among the objects of the testator's bounty; suppose that the heir receives his portion without any merit or demerit of his own; and that thus far their case is parallel with his. Yet, this is not the only consideration; for we must admit, in the case of the heir, that the property is appropriated to the very use, for which it was intended; and that the owner has a right to confer a positive benefit on whom he chooses; and that this implies, *per se*, no injustice to others. And, indeed, why should we envy any one the enjoyment of a fortune thus acquired, and held on such terms? It is to us precisely as though it had never been produced, and in that event the glorious equality would have existed without altering our condition, yet depriving another of many sources of enjoyment. Did I say, without altering our condition? Nay, it would have been prejudicial; for, other things being equal, the very existence of wealth employed in the community must generally be beneficial to us.

3. Is it true, that the accumulation of this property has, in any degree, diminished the sources of production, and thereby rendered the ability of others to better their condition less effective? Quite the reverse; these fountains are fuller now than ever, though they have long supplied a thousand streams. An indigent person has far greater facilities for enriching himself now, than at any former period, when the aggregate amount of wealth in the community was less.

On this head we cannot enlarge, without straying into the province of political economy, to which we need but refer those who are at all acquainted with the true source, production, and consumption of wealth, for a satisfactory refutation of many erroneous views of the author.

So much for the claims of kindred and blood; — so much for the right of children to not only enough for subsistence, but to the entire property of parents, subject to the above modifications; and for the right of the latter to convey it to the use of the former; but this, at best, comprehends but a very imperfect view of the nature and extent of the right

of property, to the inviolability of which government must ever stand pledged. We will endeavor to look far deeper into its nature, incidents, origin, and the rights of the owner; and to determine to a demonstration the true extent of his dominion over his property.

And first, to proceed directly to the essential measure proposed by the author, which, he says, distinguishes his plan of social reform from that of every other writer. We are, in effect, informed by the author, that his plan embraces that of every other political and moral reformer; that almost every article, which he has ever written on the subject, will be found, in the last analysis, to resolve itself into one fundamental principle, or object, in view of which they were written, — namely, the "abolition of hereditary property," a measure "foreshadowed in the first Number of this journal," and positively expressed and expounded in the article under review.

We are glad to be directed to the strong hold of all his hopes of social reform, which we will endeavor to put to the severe test of analysis, and candid reason; which we trust the author is willing should hold the reins of his mind. If he rest his cause exclusively on this ground, and it should prove untenable, it will be unnecessary to take any notice of his very ingenious and simple plan of reducing his system to practice. Let perfect justice be done to this, his dearly cherished doctrine, the result of so much toil; which is to receive but a discussion in the present age, and at length find wisdom enough, in future time, to realize it in practice. Happy the man who can predict all this of his productions!

The abolition of hereditary property, the author contends, can be justified upon grounds of humanity, strict right, the nature of property itself, and our obligation to carry into effect certain principles of legislation, from which we have no inclination to depart. We are very willing to put the case on such grounds, but expect a faithful and correct exposition of these first principles, and just applications of them; — and not that they, together with the high sounding epithets of liberty and democracy, should be made to shield every abuse of civil authority. Has the author been able, on these grounds, to afford us any definite idea of the obligation, or ability of government, to effect

the proposed change in the tenure and descent of property?

It is evident, that our "American System," as he calls it, can impose no obligation to attempt what is impracticable, inconsistent with natural right, or with the right of property. Of this, the author is well aware; and to bring his supposed change within the remedies of civil authority, it became necessary, as a preliminary step, to show that the law of nature does not, in fact, require a lineal or collateral line of descent. To this point he cites a very respectable string of authorities, all tending to prove, what all the world is willing to admit, that in view of natural right, considering men as absolute individuals and unconnected with society, their dominion over property would cease with their occupancy, certainly with their life; for, to say a man has dominion over a thing, when, in fact, there is no man, is a direct contradiction in terms, and not at all implied in the existence of hereditary property. These authorities, perfectly agreeing in principle, contain, in each passage cited, their germ of truth, and, it may be, of error, even when viewed in their proper connexion, as regards the whole works, from which they were very unskilfully selected, as they serve but poorly the purpose of the author. Indeed, the admission of the great weight of all this authority does not affect the real question at issue; since it only goes to prove, that the law of nature is silent on the subject of the lineal descent of property, but, by no means, that it prohibits it, in respect to every species of property, however constituted; and such is the predicament of a thousand cases, requiring necessarily to be provided for by legislation. Allowing, then, that the lineal descent of property, and, *a fortiori*, the peculiar mode of descent, is a case for which the law of nature does not specifically provide, it does not follow, that mere occupancy, Nature's estate, is the only title which society, in justice and expediency, may be bound to recognise; for if so, its aid in adjusting conflicting claims would be of but little avail; since it could only confirm what natural law had antecedently established, that is, our right (if not affected by industry and prior appropriation) to enter any shop or inclosure vacated for the moment, and take possession of it. For we are not to be bound by society's definition of property, which is consistent with

twenty years' absence, but stand forth on our naked natural rights, which allow no time for the lawful owner to return to his possessions. For if, in the mere light of nature, occupancy is consistent with a moment's absence, it is, on the same principle, with that of a thousand years. No; I am not bound by the modification of my natural rights, which your civil authority gives. The voice of nature calls for her own, but in the midst of society no one regards her.

Our purpose does not require in this place anything like a classification or exposition of our natural rights; but we presume, there may be numbered among them life, liberty, pursuit of happiness, enjoyment of property, also the right to support our offspring, and advance their happiness. Society cannot deprive us of one of these, unless forfeited, and can only modify their exercise, and provide for cases, where natural law is silent. These rights, as now modified in their exercise, viewed in all the nakedness of metaphysical abstraction, will be found to have lost much of their original simplicity, by entering into common life and society. Have they suffered by this change? Is not society necessary to render them effectual? What avails prior occupancy of soil, as a means of support, till society has agreed to how much each shall be entitled, and that property in it shall be consistent with a moment's departure from the premises, and with many other incidents to the useful exercise of the right of occupancy?

If hereditary property is a necessary *incident* to any natural right, its existence falls within the same reasons as the right itself, and can be justified on the same principle; that such is the case, we engage to show in due time.

But, not to do injustice to the author's cited authorities, let them speak for themselves. Allow us, however, to say, that to appreciate their entire effect, it is necessary to notice, of what *species* of property they speak, and what is the *social condition* of the owner; for their doctrines, to be obligatory upon us now, must require our case to be, at least in some respects, analogous.

2 Kent's Com. 263: "The title of property," says Chancellor Kent, "resting originally in *occupancy*, that title ceased, of course, upon the death of the occupant." All very true of property resting originally in occupancy. But how much, and what kind of property can rest only in orig-

inal occupancy? Merely the original gratuitous gift of nature; the land and its natural productions, perfectly unaffected by human industry, or any contract; for the moment the least improvement or value is added to it, or its products, then, *pro tanto*, the title rests in industry, not in original occupancy. So if any portion has suffered one transfer, the title of original occupancy of course ceases, and the second holder can justify his claim under the conveyance by parol or deed, which makes his a substituted occupancy, and of course is as sacred as the original. The same title resting originally in occupancy, we all have to the use of the high seas, which is now, "as when creation's dawn first beheld it," incapable of being appropriated, improved in value, or in any way affected by human industry, or transferred by contract. Our only title to this, then, as of the soil originally, can be that of original occupancy. But the wonder is, that the Chancellor should make this title continue till the death of the occupant, since a moment's absence would amount to a forfeiture.

2 Black. Com. 9, 10. "Property, both in land and movables," says Sir William Blackstone, "being thus originally acquired by the first taker, which taking amounts to a declaration, that he intends to appropriate the thing to his own use, it remains in him, by the principles of universal law, till such time as he does some other act, which shows an intention to abandon it; for then it becomes, naturally speaking, *publici juris* once more, and is liable to be again appropriated by the next occupant."

Now, allowing the possibility of a first taker of movables, other than the maker of them, then all, that is here asserted by Blackstone, is, in effect and principle, but a repetition of the quotation from Chancellor Kent. Blackstone has reference to the same species of property resting in *original occupancy*, though he, with a little more propriety, makes the duration of the title depend on the intention, not on the life of the occupant. Both in this must be wide of the truth; since, naturally speaking, mere occupancy imimplies the constant presence of the occupant. True, in this sense, the right would be of no avail, but all that is necessary to turn the right to any account to us, are incidents to the right, not the right itself; which incidents attend the right, and are recognised by society.

Mark the language of this great jurist. When he "shows an intention to abandon, it becomes, *naturally speaking*, *publici juris* once more"; that is, public right attaches to it once more, and it "is liable to be again appropriated by the next occupant." But the reader will recollect what it is that he abandons. It is the original gift of nature, the naked earth, (a property, in its primitive state, sufficient for the existence of a few miserable beings,) as unaffected by human industry, or civil rights and contracts, as the high seas are at present. He does not abandon what he has created by the sweat of his brow, as you would now by the accident of death without a bequest, or any disposition of your estate, leaving no relative. Yet the author would apply the same rule to both cases; though, in the former case, the abandonment consists in giving back to nature, or the public, only what you had received from the same; and in the latter you give up what your industry has created, and that, too, as we have shown without any prejudice to the original materials of nature,—two things essentially different. Yet, by some magic of our reformer, these two species of property are identified, and subjected to the same rule of distribution. Though he plainly admits the abandonment of the producer, (if not expressed, at least intended, by reasonable implication,) to be a bequest of his earnings to the exclusive use of his children, if any survive him.

And again; "The most universal and effectual way of abandoning property is by the death of the occupant; when both the actual possession, and the intention of keeping possession ceasing, the property, which is founded on such possession, and intention, ought also to cease, of course. For, *naturally speaking*, the instant a man ceases to be, he ceases to have any dominion; else, if he had a right to dispose of his acquisitions one moment beyond his life, he would also have a right to direct their disposal for a million of ages after him; which would be highly absurd and inconvenient. All property, therefore, must cease upon death, considering men as *absolute individuals*, and unconnected with civil society."

All this goes to the same purpose, and disposes, as we think, very correctly, of all that species of property resting merely in occupancy, which may happen to be possessed by any one, considered as an absolute individual, before en-

tering into society. It is here correctly asserted, that the owner's dominion over this species of property ceases at his death. This is, strictly speaking, true of his dominion over every species of property, and we shall soon have occasion to show, that *post mortem* dominion, even in view of civil society, is by no means necessary to the descent of property.

Jefferson, too, is an authority to the same point with those cited, who says, "the earth belongs, in usufruct, to the living. The dead have neither powers nor rights over it. The portion occupied by any individual ceases to be his, when he himself ceases to be, and reverts to society."

Bentham's dictum swells the list, without adding to the weight of the authorities. "Property and laws are born together, and die together. Before laws were made, there was no property; take away laws, and property ceases."

A strange confusion of the idea of all property, which, save the original gift of nature, must originate only in industry, with the idea of its protection, which originates in civil authority, or the laws.

Last comes Mirabeau. "It seems to me, that the difference between the right of a man to dispose of his property during his life, and that of disposing of it after his death, is not less than the difference between life and death itself. Death engulphs a man's rights and himself."

With this authority, also, we perfectly concur. We see no difficulty in rejecting *in toto* the right of a dead man to dispose of property. These authorities are but fair specimens of an endless list of names, all in point, exhibiting, without question, correct views of the principles regulating the disposition of that comparatively small portion of property resting in original occupancy, and belonging to persons, considered as unconnected with society.

Hitherto, we have been considering but one species of property, the original gift of nature, unimproved and unaffected by human industry or civil institutions. This kind, of course, cannot become hereditary, since the owner, having added no value, the claims of nature, so to speak, extend to his whole estate, leaving no residue for the exclusive use of his children. To give our views anything like a scientific shape, would require a notice of the different species of property, which so figure in all legislation concerning it.

This our limits do not admit. Let it suffice, if we notice, besides the original material, the same as affected by industry, which gives to the owner a higher title than mere occupancy.

Our original condition, as tenants in common, holding in severalty the earth, parcelled out in equal portions upon Christian and democratic principles, would present a striking contrast to what we now behold in the fact of property; and this without implying any impeachment of the means by which this great change was brought about.

The power of alienating and exchanging property, as well as of enhancing indefinitely its value, by persons possessing every variety of capacity, must soon destroy the equality and simplicity of this ideal state. The idea of each living within his own resources, would soon give place to great changes in the constitution of property and social condition of all classes, growing out of the wish to turn their joint efforts to better account, in providing for their increasing wants, and multiplying the sources of human enjoyment; and one step thus taken would never be retraced. Mutual dependence and inequality of condition would inevitably arise as society itself advanced. Thus, the rights of each would soon become differently modified, and at length arrive at their present state; — so that we may see how absurd it now is, to talk of them as though they preserved their original simplicity.

Yet the author would fain deduce the present legitimate constitution of property from its *primitive* form, as ascertained by his laborious investigation of the question of its mysterious origin, which we consider as unphilosophical as it is useless. The question of the origin of property, like the origin of government, the origin of evil, which so figure in all theories of speculative moralists and statesmen, does not concern us nearly so much, as the more philosophical question of its present real nature, incidents, and qualities. Our present rights to an estate cannot be materially affected by a knowledge of the tenure by which it was held before the flood.

If this primitive form is to be imposed upon us as of present obligation, then the rights of mankind must be left at the mercy of conflicting hypotheses. For, in the convenient darkness, which hangs over the question of the

origin of property, the author has discovered three original forms, out of which he carves a fourth, better adapted than either to his conception of the true state of society. And what assurance have we, that a new historical account of its origin, may not furnish us with other facts to unsettle the rights of mankind, and serve as a basis of a new revolution? Such would be the natural consequence of making the right of property rest merely in history, and of considering property as having no *present nature* and qualities to be investigated and provided for. Should we expect such doctrines would find an advocate in the gifted individual, who has been all along contending, that we are wiser than our forefathers, and has distinguished himself in the glorious struggle of emancipating the present from the past?

It is to be observed, that the author assumes as an admitted principle, that the descent of property requires the owner to exercise dominion over his property after death, which is absurd in theory, and contrary to fact. The present disposition of property requires nothing like this. But every present or continued use and appropriation, as recognised by civil society, rest on acknowledged principles of contract. And the obligation of contracts is as binding on us as those of natural law. The right of property, as generally understood, implies in the owner a power to appropriate it to any use, not contravening public morals and the policy of the law.

And do not the same principles, which justify and regulate all executory contracts, the necessity of which the author must admit, lie also at the foundation of the testamentary right, as at present exercised? What is a valid devise, but a contract, fair in all its parts,— an agreement, for a sufficient consideration, of value, love, or affection, to make certain appropriations to the use of children, wives, and parents, and sometimes strangers? The donee or trustee, in accepting the bequest, or its superintendence, virtually covenants to be bound by all the just stipulations and conditions therein contained.

If this is a valid contract, *inter vivos*, to take effect at the moment of the death of the donor, or a moment before, to save all dispute about his controlling property after his death, and the grantor has faithfully performed his part, why, upon every principle of justice and equity, should not the

other party be bound to the faithful performance of his part also? And how can the grantee's rights and obligations be at all affected by the death of the testator, after faithful performance on his part?

Such is, essentially, the nature of a will. The same remarks apply with equal force to all kinds of contracts, whether executory, or executed, which stand on principles of eternal justice, and, therefore, must be enforced by society. We would be informed how such a contract, if conclusive upon the rights of the parties, and even of third persons, in the absence of any specified injury, during the life of the grantor, can be at all affected by his death. We perceive no principle of natural justice, or reason, on which survivors or civil authority can escape its obligation. We insist, therefore, that the necessity of extending our dominion over property after death, is not, after all the author's complaint, required by any disposition of property, now sanctioned by law in this country; to say nothing of the authority of all conveyancers, who declare that a devise, in contemplation of law, takes effect, certainly as far as respects the testator's dominion over the property, at the very instant of death, when the power of revocation ceases, and the rights of the parties are unalterably fixed. And need we say, that the time when any contract is to take effect, is generally at the option of the parties?

The essential part of a devise, or of any contract, is the intention of the parties. The fact, that this intention is sometimes expressed in writing, is but a convenience adopted by society, not with a view, as has been suggested, of exercising a magical influence over the rights of mankind, but to secure the best possible evidence of the consent and agreement of the parties to the alienation or disposition of the property therein set forth; that their solemn acts might be saved the peril of resting merely in memory and parol evidence; by which course may be avoided the abuse bad men might make of the uncertain and perishable nature of such evidence. All admit that nothing is more necessary to society than that the solemn contracts between man and man should be certain and fixed, that the parties may know when they are, and when they are not bound. The exercise of our natural rights, and the interests of society

require, that the obligation of contracts, when possible to be performed without offending in morals or public policy, should rest upon something more permanent than the caprice of the parties, or of the legislature.

If the author would have society exercise such a controlling power over our contracts as that of avoiding all conveyances by testament, then, in consistency, we require him to go the length of the principle, and not follow truth to but a single point. And what would be the result? Would he be willing to abide the consequence? Suppose government, without any regard to its ordinary functions, or the right of property, as now recognised, should enact, with a view to control the intentions of the testator in respect of the disposition of his property, that every devise should be considered void in law; and this under the notion, that a devise implied an impossibility, or violation of the law of nature, which requires, that the dominion of a person should cease with his existence. The same reason applies, with equal force, to all other executory contracts, (the objects of which are to be realized at some future time, without regard to the life of either of the parties,) which are not only convenient, but absolutely necessary in the commercial world. Thus, the most ordinary transactions of life, would be placed in the greatest jeopardy, and all confidence, in every prospective enterprise, shaken; since the rights of all the parties to the contract would be constantly liable to be deranged or forfeited by the death of one of the parties, and the reversion of the funds to society, which might happen when their objects were but half achieved. There would be left, then, the only alternative of specific performance of a contract void in law, or the placing of the parties *in statu quo*, or in their original condition before entering into the contract, which, from the nature of the case, might be impossible.

Thus we see, that the vital interests of the commercial world are deeply involved in the decision of the question, whether the validity of every disposition of property, for any specified purpose, be made to depend on the life of the grantor. The author virtually admits, as inherent in the right of property, the power of the owner in the ordinary transactions of life to benefit his children, by a conveyance of any amount of his property, to their exclusive use, subject to

all lawful claims, however little this may harmonize with his *American doctrine* of *equality, no privilege*, and *equal chances*. Now this is conceding, in principle, all that we insist upon; as we contend that there is no material difference between a solemn will and testament, and such authorized mode of conveyance, except in the time in which the property vests in the donee, which, in the case of a devise, must be at the death of the testator. Neither case, strictly speaking, involves the absurdity of a right of disposition, or any control over property, after the death of the owner. We, therefore, charge the author with inconsistency; for he upholds one mode of conveyance and destroys another, essentially the same. He allows the parent to make a gift to his children, in the ordinary transactions of business, at one period of life, but deprives him of the privilege of doing the same at another period, by will and testament.

Are not these two conveyances essentially the same commercial transactions, between the same parties, for the same consideration or inducement? Do not both gifts, though one is to take effect at the death of the donor, confer the same exclusive benefit on the donee? Do they not affect society in precisely the same manner? Nicely as we would observe metaphysical distinctions, and ethical rules, we confess our inability to perceive the least distinction, in principle, between the two cases; between a gift at death, and a gift at a former period in life; between a will or testament to stipulated uses, and admitted and recognised executory contracts, which are necessary to the freedom of commerce in human life and practice. Yet the author's reasoning sweeps away the one without touching the other. The only difference between the two cases is, that the gift at the death of the owner, appears, at first view, to involve the absurdity of the owner's controlling property after his death; which absurdity disappears, on a moment's reflection.

The appearance of this *post mortem* dominion of the testator is quite striking, in a few instances worthy of notice But, as just mentioned, upon a nearer view, the absurdity disappears, and they will be found to be perfectly reconcilable with acknowledged principles of contract, *inter vivos*. Such is the case with donations by the founders

and benefactors of hospitals, colleges, and with all bequests for charitable and religious purposes.

Are such persons to be considered as controlling, or dictating the use of their property a thousand years after their death? Not at all. We acquit these generous benefactors of the race, whom we can no longer see, but always remember, of any such charge. Such a bequest, or conditional gift to stipulated uses, like that to children, amounts to a contract, to take effect from the death of the testator. Government, in accepting the donation or its superintendence, virtually covenants to apply it to the specified uses; and this is the condition, on which alone government can hold it. The testator faithfully performed his part of the contract before his death. Government has, for a thousand years, been as faithfully performing its part, by guarding the stipulated uses, and so must continue to do, as long as such uses continue to exist. This supposes the contract to be consistent with the policy of the government, and fair in all its parts. If such is not the case, or specific performance has, from any cause, become impossible, then, probably, government may be absolved from its obligation. What then? Shall a general distribution of the spoils take place? By no means. The parties must be restored, to their condition before entering into the contract. An adjustment must be made, so as to equalize the benefits and burdens growing out of the transaction. The money should be refunded, if possible, to the grantor. If he has died without providing for such an event, then the nearest approach must be made towards effecting his reasonably supposed intentions, by allowing the bequest to fall back into the lineal or collateral line of descent.

Thus the immense funds appropriated in the cause of humanity, and to advance the interests of religion and learning, are subjected to acknowledged principles of contract. The owner only exercises a dominion over his property, perfectly consistent with the right of property, as recognised in principles of natural justice. The author, by so narrowing the right of property as to deprive the owner from making such appropriations, would strike a death blow to the future interests of humanity, religion, and learning; and deprive the nobler portion of mankind of a powerful inducement to accumulate wealth; and the moral and in-

tellectual culture of the race would be left at the mercy of state appropriations.

This, however, is much more notice than a man of straw deserves. The possibility or right of a dead man to control property, there are few but will be disposed to call in question. Yet the looseness of the language of some authorities have given occasion to such a supposition.

These disconnected remarks may suffice to put at rest the question of *post mortem* dominion of the owner over property; and to show that the testamentary right, as now exercised, is essentially the same as the right to make any executory contract in the ordinary transactions of life; — that it is founded in the right of property itself, and implies no unjust dominion of the owner over it.

But the testamentary right can be placed on a different foundation.

If it is not a natural right, yet, is it not an incident to a natural right, and, therefore, equally sacred in view of society? It is a necessary means of providing for what we conceive, (not what society may dictate,) essential to the support and well-being of our offspring, whose interests and happiness we have a natural right to promote, in any method we please, not occasioning any specified injury to others. Now every natural right carries with it the power to use all the necessary means to make the right effectual. The author, therefore, by insisting on conformity to the law of nature in the disposition of property by individuals or society, lends a most powerful argument for our purpose. Society, then, has no power to invalidate a bequest to children, any more than it has to nullify any *bonâ fide* contract, by which the testator advances money to the same, from time to time, at any other period than at the last moment of his life. Both grants confer exclusive advantages; both are equally necessary or convenient to the exercise of his natural right to promote, in his own way, their happiness. This, like all our natural rights, is paramount to all legislation. It may be modified in its exercise by the civil authority; but, without specified injury in a particular instance, can never be taken away by society for any purpose of the supposed general welfare. And not to give to strangers, we have shown, cannot be regarded, in any sense, as a civil injury.

The great sources of all the author's errors, in treating of this subject, were his not keeping clearly in view the distinction between property, considered as the original gift of nature, and property as created by human industry; and his not clearly perceiving the distinction between our natural rights, and the same as necessarily modified by civil society

Natural law, considered as the will of God revealed in the constitution of nature, would alone prescribe the disposition and tenure of all that species of property embracing the original gift of nature, the earth and its spontaneous productions. From the very nature of this property may be deduced the justice and necessity of its being controlled exclusively by natural law. The inhabitants, in possession of such property merely, would originally march forth, like herds of cattle, each seeking subsistence, wherever it could be found. By this law they could possess the earth only as joint tenants, — not as tenants in common, holding seperate estates in severalty, as the author has erroneously supposed. No appropriation could be made to the use of any one, not liable to be forfeited by a moment's absence of the tenant from his premises.

Now to adopt a supposition the most favorable to the author's theory, and which, in fact, is implied in the practice of almost every country. Suppose the inhabitants of the earth assembled, either in person, or by representation, for the purpose of entering into a stipulation, with a view to subject their previously exclusive natural rights to the first conventional rule. Each agrees, in consideration of receiving, to his exclusive use, a portion, equal to the quotient of the earth divided by the number of the inhabitants, to surrender his interest in the whole earth, or right to a precarious existence wherever he could find it. Would such a deed of partition be binding upon the parties? Unquestionably. Each would be entitled to an equal portion; because the subject-matter of this contract was a direct gift of God, (unaffected by industry,) to all the inhabitants; and they, in this stipulation, acting upon Christian and democratic principles, would regard all citizens as equal, and entitled to equal possessions as they always should do in disposing of the direct gifts of God. The justice of this distribution into equal portions arises solely from the peculiar nature of this species of property, being unaffected by industry.

Each now holds separate estates in severalty, not under the title of prior occupancy, but under the contract or conveyance to each by all the rest of the world, which, of course, is valid against the rest of the world. All things now assume a different aspect. My original natural rights are modified by a conventional right. I go forth to my portion. It may now be said to possess some of the attributes of property. I have a higher title than mere occupancy; I can depart from and return to it at pleasure. Society cannot touch it at the peril of their agreement. I can even delegate the occupancy of different portions of my land to my workmen, yet retaining in myself a superior title, sufficient to prevent them from appropriating the fields in which they may be temporarily employed in my service. Nor is this all. My portion may be alienated, exchanged, leased, released, mortgaged for funds for my use, incumbered in every manner, estate carved out of estate, and covered with titles, six-and-twenty deep, one lapped on the other. The rights of half the world become, at length, in some way or other, involved in or attached to my little estate. Such is what the convenience of society requires; they are incidents to my right of property. Then lo! another inhabitant of the earth is born, who demands a new division of the earth, (having never consented to be bound by this original compact,) that his natural rights may be recognised. Do his natural rights attach to the whole earth, or only to the portion assigned to his father? If to the former, by what method of adjustment shall all these separate estates be thrown back into a common fund for reappropriation? To effect this, only in respect to my little estate, I must break through my obligations to thousands, however honorably incurred. All their natural rights must be sacrificed to adjust, by purely natural law, the claim of this new comer to the original materials of nature, and this, though he be born with far greater facilities to procure his livelihood under this new state of things, than any of the original tenants were before the partition. We do not, therefore, perceive the necessity, nor the practicability of a division of the earth, *de novo*, to provide for this special case; much less, could this be done where some thousands are born every day.

What must have been the extent of the title of each before this original partition, as collected from the law of

nature? Evidently a life estate, in no particular portion, but in the whole earth; nor had any one anything that possessed any of the incidents of property. The condition of each could not but be equal; since it could not be affected by the inequality of their industry or capacity.

What would be the extent of the title, by which each separate estate would be held after partition, to which the law of nature would no longer be exclusively applicable? Evidently the title, as derived under the conveyance, and as against the rest of the world, would be of indefinite duration. The value of each estate might at length be enhanced indefinitely; what was formerly a property sufficient for the support of one, is now made to sustain a thousand. This original property in land has, so to speak, lost its identity by subsequent modifications. It has been regenerated by industry, suffered a thousand transfers, and become, if not mainly in itself, the fruit of industry, at least the representative of it; why then should it not be held by the same tenure, under the same title, and subject to the same incidents?

What should be the duration of one's title to the fruits of industry? Natural law is silent on the subject; for it constitutes no part of the original gift of nature, in which that law is revealed, and over which it had originally exclusive jurisdiction. Being, from the very nature of this species of property, which constitutes the great mass of the wealth of the world, unprovided with any specific direction from the law of nature, we are, necessarily, thrown back upon general principles, to gather all our light relative to the duration of title, and mode of descent.

Can we from such data deduce more than a life estate? If not, then this property cannot be made available, as a means of exercising our natural rights, nor safely be used in production, nor made the basis of any commercial transaction; since it could not be made liable for the support of children, or relatives, for a single day, nor made the subject of any executory contract, much less embarked in any prospective enterprise; for the death of the owner might intervene, and defeat every undertaking of such a nature, by occasioning the reversion of the money to society. Thus property would lose most of its present incidents and functions, if not its title to the very name. On the contrary supposition of a higher title, property would be unfettered in any of its

functions, and be at the free disposal of the owner, liable to indemnify for all civil injuries thereby occasioned.

See, then, in the very nature of this property, in its legitimate functions, in the general interests of society, and in the exercise of our natural rights, the justice and necessity of the existence of a higher title than occupancy, or a mere life estate.

The right of bequest, therefore, as dependent on the title, though it be not a natural right, yet so far from being inconsistent with natural law, is an incident to our natural rights, and justified on general principles, and grounds of expediency. But, to how much of the fruits of industry does the title of each extend? The human mind, in its right state, can furnish but one answer to this question, to wit, the amount covered by the title of each, can only be graduated by the amount of his industry, and rightful accumulation; for this species of property, and even the original gift of nature, as now modified, cannot, in any just sense, be considered as a direct gift of nature, or of society. Society, therefore, in acting with reference to it, upon Christian and democratic principles, is bound by every principle of justice and expediency, to consider each citizen not as entitled to equal things, but as having equal rights attached to very unequal things.

See, then, the importance of noticing the marked distinction between property, considered as the direct gift of God, and property considered as the product of industry. If the former had never suffered any change in its nature, it must forever have remained under the exclusive control of the law of nature, which would declare an equal amount to be due to each of God's children; and the duration of the title of each to his share would depend on his continued occupancy of the same; and one's right to a property in the whole world, sufficient for subsistence, must terminate with his existence, when his possessions would sink back into a common fund, for the use of the next generation. And this from the peculiar nature of the property itself; for before an actual or implied partition, which is a civil arrangement, no one had anything, that he could identify as his own, so as to make it, during his life, the subject of any contract or conveyance by deed or testament to any exclusive use. But as soon as this original property is changed essentially in its

nature, and becomes appropriated to an individual, will the author pretend to say, that he does not have very different rights in respect of it? and that it must be subjected, exclusively, to the dominion of the same natural law, in respect of the duration of the owner's title? Shall things, totally different in their nature, be subjected by our reformer to the same regulation? Do Christianity and democracy require this? So it seems, from the author's view. Then let him be consistent, and give natural law exclusive dominion, in every particular, over this latter species of property, and not merely in respect of the duration of the title, but of the amount covered by the title of each; and in spite of every diversity in the capacities of men, in respect of industry, economy, prudence, and the other virtues, let each have but his equal portion with every other.

Now on the more rational supposition, that this original property, being regenerated by industry, and enhanced indefinitely in value, has lost its exclusive allegiance to the same natural law, in respect to the extent and duration of the title of each, then the author's opinion respecting the proposed change in the constitution of property, is left without any foundation. And it becomes absurd, to resort to any principle of natural justice, in order to enforce a reversion of the fruits of the owner's industry, at his death, into a common fund, for the benefit of the next generation; from which fund it was never taken, as in case of original property, and with which it has no natural connexion. And on this supposition, the author will be saved the trouble of sweeping away, in principle, every existing conventional rule relative to the transfer of property during the life of the owner, for the sake of subjecting this perfectly different species of property to the exclusive dominion of natural law, in order that it may be apportioned out, like original property, in equal divisions to the helpless children to whom it was conveyed, and to strangers.

If the essential difference, in every respect, between these two species of property, is to make no difference in respect to the owner's right to, and power over each, respectively; but both, notwithstanding this diversity, are to be subjected to the same natural law, and the title to each is to confer the same rights in every respect; then the power of the owner to convey by testament, or by any other mode of

transfer, falls to the ground, and the fruits of our virtue and and toil, must sink back to a common fund; and our children, houseless and naked, must be content to take refuge in a common dividend.

But, on the contrary supposition, if the distinction insisted upon is important, and affects essentially the nature and extent of the title to each species of property; then the author is wrong, and these direful changes in the nature of property, as now constituted, cannot be required, on principles of natural justice.

Again. If property in the original materials of nature, and, by consequence, under the exclusive control of natural law, ceased to be subject to this law, when it lost its identity by material changes in its very nature; — if, by subsequent modifications and enhancements in value, it has become, mainly in itself, the fruit of industry, or at least the representative of industry; then there is no reason for not classing it, for our purpose, with what is merely the product of industry, and subjecting it to the same rules relative to the title of each individual to it, — in regard to its duration, the extent of possessions covered by it, and the right of transfer, which the title confers upon the owner. So that all property as now constituted, and rightfully possessed by the present generation, falls within the same predicament, as regards the duration and extent of the title by which it may be held, and the power which the title confers on the owner over it; whether or not that power be sufficient to authorize the owner to control the descent to his children.

It is, then, sufficiently evident, that all property, as now constituted, being of a nature directly opposite to that of property in the original gift of God, must for the same reason, that that property was brought within the exclusive control of natural law, be taken out of the dominion of the same law.

Then it must be regulated, in respect of the nature of the title by which it is held, by rules purely conventional, — to be, as before suggested, collected from grounds of general expediency and convenience, and the nature of the property itself. If a bequest to limited uses is not a natural right, it is sufficient, that it is shown to be a necessary incident to a natural right, or even convenient to its useful exercise.

Finally, to recapitulate in order a few of the principal reasons in favor of the existing testamentary right.

If, by taking away this right, and exposing all property to the chance of falling into a common fund at the death of the owner, every executory contract would be placed in the greatest peril, and all confidence shaken in every useful enterprise; — if the parent would thus be stripped of his right to use his property as a means to advance the well-being of his children during any definite time; since his death in the interim would defeat every scheme for such a purpose, or leave its execution at the mercy of a common dividend, however inadequate it might be; — if, as consistency requires, not only a will and testament, but every conveyance standing on the same principles, must be rendered void by the death of the grantor; — if, in every necessary and prospective enterprise, the liability of the property invested must be saddled with the condition of the owner's living till the time of its consummation; — if the greatest inducement to production would be taken away, and property deprived of many of its most useful functions; — we say, if, from the inapplicability of the law of nature to the regulation of this species of property, we must lay down some just rule of transfer, and all these considerations dictate what that rule should be, and lie at the very basis of the existing testamentary right, do they not constitute a foundation fully sufficient to uphold it, in spite of any theoretical scheme of the general good entertained by the author to the contrary?

If these considerations are sufficient to show, that the testamentary right is not only highly expedient, but that it is an incident to our natural rights, and to the right of property itself, then it is equally inviolable with those rights themselves, and entitled to the same protection from civil authority.

The claims of the legatee, then, are not now to be adjusted as they would be in our primitive state by the law of nature, as then understood. Rightly enough, it may be said, that, *naturally speaking*, children cannot inherit property, or take from the parent more than enough for their subsistence.

With this qualification, they would, in the mere light of nature, stand, in reference to the bequest, on the same foot-

ing with strangers. How, then, do they take their portion? Evidently, they take by virtue of the owner's right of property, as defined and recognised by conventional rules, (founded on principles of eternal justice,) and his ability, by virtue of that qualified right, to convey it to whom he pleases, by any proper mode of transfer, at any time during his life.

Admit, in substance, all the author asks in treating of the subject of hereditary property, and it advances us not one step towards his strange conclusion of its abolition.

Happily, the author informs us towards the conclusion of his article, that all that he has said on this subject resolves itself ultimately into three propositions, which he thus concludes; "if we have demonstrated thus much, we have demonstrated all we undertook to demonstrate." Each of these propositions we are now prepared to meet, with a confession and avoidance, or a positive denial, with our reasons for so doing.

1st. Says the author; "According to natural law, a man has no right over the property he possesses any longer than he lives."

Admitted. But have we not shown, from the present constitution of property, from its necessary functions in serving the purposes of life, and from the right of property itself, viewed in the light of reason, and from grounds of general convenience and expediency, that property is necessarily taken out of the dominion of natural law, and subjected to the regulation of conventional rules, which give to the owner a very different title to, and right over, the property he possesses?

2d. "That his children have no natural right to inherit his estate, and stand in relation to it precisely as the children of strangers."

This, also, we readily confess, but deny that it amounts to anything. Have we not, indeed, been at some pains to show, that children do not take their portions by natural right? Has it not been made apparent, that the descent by testament was not required by natural right, but by principles of justice and general expediency? Have we not, in view of natural law merely, placed the right of children to the property of parents, (save their claims to sufficient for their support,) on the same footing with stran-

gers? And finally, with all these concessions, have we not, nevertheless, found a sufficient foundation to uphold the children's exclusive right to the legacy in the moral obligation of parents to provide for them, and in the right of property itself, and the power of the owner, by virtue of that right, to transfer it to the exclusive use of his children?

The third position of the author is, "that property, vacated by the death of its former owner, the individual members of society hold not as common property, but in severalty, and in equal shares."

This we cannot admit. If, by being vacated by the death of its former owner, the author means, in effect, a bequest to the present generation, then the property thus acquired is of the same nature as the property in the earth was originally, and, therefore, should be enjoyed by the present generation in the same manner as that was by the original inhabitants, that is, as tenants in common. And so they must continue to hold and enjoy such property, till it is affected by industry, or till some actual or implied partition takes place, or it becomes affected by civil institutions; when the tenure and regulation of it would necessarily be taken out of the control of natural law; and such an appropriation and apportionment made, as each might agree upon; though justice would require, that the shares of each should be equal.

The author's three propositions being thus disposed of, the foundation of hereditary property remains unshaken by him, notwithstanding his grave conclusion, following next upon them, to wit, "If we have demonstrated thus much, we have demonstrated all we undertook to demonstrate. We have shown, that our proposition to abolish hereditary property, and to dispose of it by some equitable law, for the use of the new generation, is founded in natural right, and is demanded by the law of natural justice."

We trust we have, by this time, made it fully apparent, that natural law cannot at all regulate property, as now constituted; therefore, it can neither confirm nor abolish hereditary property; and justice requires, that the conventional rules, under which it must be brought, should dispose of it very differently.

Such are the considerations in favor of the owner's existing power to transfer his property to his children, or to whom

he pleases, and thus to make it hereditary. And the practice of mankind evinces their disposition to stand firmly upon this right, without ever intentionally allowing a single estate to be vacated, or left for a moment without an owner. This, of course, would leave no funds for universal distribution, to carry into effect the author's theory.

Next, as to the method of exercising this right. This, of course, is but a mere incident to the right, and a mere question of expediency, — to be determined, generally, in each instance, by the convenience of the parties, and the circumstances of the case. But the law, for the wisest reasons, has prescribed certain methods of exercising this right in respect of the transfer of certain species of property; and requires, that the terms of the agreement, or some memorandum of it, should be committed to writing; and this, as before said, to secure the best possible evidence of our solemn engagements, and save them the peril of subsequent doubt, and consequent litigation. Call such a transfer, if you please, a deed, or devise, or the magic parchment, that so disconcerts the rights of mankind. Civil authority requires a rigid and technical conformity to prescribed forms of transfer, as necessary to the validity of the conveyance, in point of law. But are justice and equity as rigid in their requirement of conformity to technical rules? By no means. If the justice and expediency of the right is admitted, then, on principles of eternal right, all that is essential to the validity of the transfer is the undoubted intention of the parties in respect to it, though that intention, and the terms of the agreement, may be couched in very awkward language. This is enough for equity and justice. Their demands of justice, thank God, (though it be not so with the common law,) do not occasion the loss of a fortune, and the shipwreck of one's sacred rights, merely in consequence of the misspelling of a word, or the insertion of an "*and*" instead of an "*or*" in the instrument of conveyance. Justice looks to the substantial merits and essence of the thing; the law, to the technical forms and method of exercising the right. This is the evil of the law, and has often occasioned its perversion to evil purposes, chicane, and delay of justice. Such abuses, however, are fast passing away. We were not a little surprised at finding, in the person of the author, an advocate for such rigid conformity to technical rules in the transfer of property.

The author, by implication, admits the right of the owner, to transfer his property by a gift, even just before his death; and he could but know, that, by the exercise of this admitted right, the hereditary descent of the great mass of all the property in the world would inevitably be secured. And how does he get over this difficulty in the way to the abolition of hereditary property? Shall men be not allowed to exercise their acknowledged rights? And what should be the consequence of an omission of the owner to exercise such a right of disposing of his property? Would not a just and wise provision for such a case, require the nearest possible approximation to be made towards such an appropriation, as the owner would have made in the exercise of his acknowledged right, had he not been prevented by inevitable accident, or mistake? The author thinks not. And he even turns the owner's omission to perform a high duty, in reference to the disposition of his property, to great account; and in the want of strict conformity to all the requirements of his intricate and technical rules of transfer, he seeks to justify seizing, as it were, with force and arms, all the owner's property, which through accident, mistake, or inevitable casualties, was not tranferred by the owner according to set forms; and thus he would recruit the public coffers with ample funds for universal distribution, in equal proportions, on Christian and democratic principles. For justice' sake, let us state, in his own language, a few of his ingenious devices for procuring the means of executing his proposed change in the social condition of the race.

1st. Says the author; "We are told, that the proposed change will amount to nothing, because a man may give away all his property just before his death, and that gift society must respect. In this way property must descend, as now." And what answer does the author make to this? That the gift was unjust, inexpedient, contrary to public morals? or the enlightened policy of the law? or exceptional in any respect? that it was not made in exercise of a just right? Does the author make an answer that goes to the merits of the transaction? Here comes his technical reasons. "That a man rarely knows the precise time when he shall die, and, therefore, death may surprise him before he has made the gift and the necessary transfer of his property; consequently there would always be a large number of cases, that could not be affected by this objection."

This is visiting severely the misfortunes and infirmities of human nature. To be surprised by death, at an unexpected moment, before having provided for children, and dependents, as might have been done by the exercise of a little more wisdom and prudence, is bad indeed. But by this calamitous event the author's scheme would reap a heavy harvest, if there was not in this enlightened country some remedial justice found in equity to minister relief from such oppression and injury to the most sacred rights of mankind; for with us provision is made for cases, in which admitted rights and justice have been defeated by such surprises, accidents, and mistakes incident to human life, and the infirmities of human nature. But the author is not so charitable; and thus continues to insist on the exacting of the penalty of non-conformity to his technical forms, in the exercise of this just right of transfer. "A gift must be more than a gift *in mente;* it must be an actual delivery of the property into the possession of the donee. Now there are many men, though they believe they shall die soon, who do by no means like to part with all their property to their children, and thus render themselves wholly dependent in their old age. There are too many Regans and Gonerils, and too few Cordelias in private life, to render this always prudent or safe; from this cause a large addition may always be looked for to the number of cases not liable to be affected by the objection we are considering."

Next a subtle distinction offers itself, suitable for his purpose to shipwreck our rights upon, between gifts "*inter vivos,*" and gifts "*mortis causâ.*"

Is this a mere technical distinction, or is it founded on a substantial difference in the very nature and principle of the two classes of gifts? Such a distinction exists in legal history, we readily admit, and there it was a valid one; for the latter class of gifts were distinguished from the former by this important circumstance; that bequests to pious uses were thus extorted by the priests at the bedside of the dying sinner, by pathetic appeals to the religious principle, when nature was sinking into decay, the powers of the mind paralyzed, and reason almost extinguished. Thus, in an unguarded hour, one might be persuaded to make his peace with God, and atone for a life of crime, by the sup-

posed justice of disinheriting his children, and giving his whole fortune to the church, as the price of his soul's salvation.

Such a distinction as this between the two classes of gifts, is recognised and provided for by our existing laws. But is such a distinction the ground of the author's classification? Not at all.

The doctrine of invalidating gifts, *causâ mortis*, in the legal sense of the term, stands on the supposition of fraud; undue advantage taken by the strong over the weak; by the cunning, artful, and intriguing, over the ignorant and superstitious. And such an objection ought to be considered sufficient to render void every such transaction. But by *gifts causâ mortis*, the author only means a gift made in contemplation of death, in exercise of an admitted right of transfer, though mingled with the design of extending this right to the power of controlling his property in the hands of the donee, so as to regulate unduly the descent; and thus far, we admit his act should be considered void, and his children, (for so far it descended according to right,) should have it as an absolute inheritance in themselves, independent of any such restraint. But how thus could the children's right to it be forfeited, and a reversion occasioned of the funds to society? The gift, in such an event, could be revocable by society only, so far as to give the donee more complete dominion over the property.

Thus the acknowledged legitimate objects of the bounty of the owner of property are to be stripped of their just dues, merely for the want of technical formality in the method of transfer; for to legitimate the gift, says the author, it must not rest merely *in mente*, it requires the donee's actual possession. And the forfeitures thus occasioned, will fill the public coffers with ample funds for universal distribution.

If forfeitures are to be considered, in principle, as a means of enriching the state, and not as a penalty to make men more cautious, punctual, and methodical in the exercise of their admitted rights, then let a defect, in the technical form of transfer, invalidate a gift, however deserving the object of the testator's bounty. And consistency would require us to multiply the intricacies of the law, and increase the difficulty of strict technical conformity; since forfeitures and penalties,

against which the author allows no relief, would be more available to advance the general good. But if the author would not have government make the vain attempt to enrich the state with spoils, or the blunders of the owner's not having made a disposition of his property in his prescribed form, by delivery of possession at some other time than just before his death, then he must regard such defaults as misfortunes, against which the donees must be relieved. If it was just, that they should have possessed this property, either in their own right, or as peculiar objects of the testator's bounty, or by virtue of the owner's right to transfer it to them in due form, a few months before his death, why have they not, in strict justice, a right to the same, though the property be intended to vest in them at the death of the owner, by a transfer a little less formal, and even though the intention of the owner to transfer it to them be, through accident or mistake, not positively expressed, but clearly implied from circumstances? Have their admitted rights, and those of the owner, been lost by the omission or insertion of an "*if*," an "*and*," or an "*or*," in the form of conveyance? It would seem so, from the author's proposed system of jurisprudence. But if he changes his ground, and allows relief in such cases, then he is left entirely without funds for his scheme of equal distribution to the next generation. For the testamentary right, exercised in due form, would, as we have seen, secure the hereditary descent of the great mass of the wealth of the community; and what was apparently forfeited by defect of formality in the exercise of this right, would, by judicial aid, be directed as nearly as possible in the same line of descent, or made to serve, as nearly as possible, the supposed intention of the owner.

See, then, how hard the author is in imposing obligations on civil government. We have before intimated, that he required government to be essentially changed in its nature. Instead of being a mere instrument for preventing wrong and distributing justice, he would have it make the vain and impracticable attempt of becoming a parent, a philanthropist, — and undertake to recognise and enforce all obligations binding in morals, and required upon mere reasons of generosity, charity, and benevolence.

But here he requires government to enrich each successive generation by universal and equal distributions, when

it in this matter is bound hand and foot; has nothing to give, no just means to procure anything, and lo! not where to lay its head.

The author correctly asserts, that, as far as society is concerned, all members of the community should have equal chances. But in this matter society is not concerned, and cannot be concerned, unless a duty can be required where there is no ability to perform.

To require all this of society, as within the range of practical justice, and the discharge of her legitimate functions, when she has not a cent for the purpose, and cannot procure the means without forsaking the very fundamental laws and principles, to which she must ever stand pledged; all this of society for the purpose of securing equal chances, and equal starting-points, to remove all diversities in the conditions of men, however caused, that society may not be branded with the charge of witnessing two men of equal merit, one in the ditch, and the other starting in life with ten thousand pounds; all this, to equalize the chances of the Duke of Newcastle and one of his tenants, or those of the talented and enterprising Lawrence with those of one of his workmen; — to make all these demands of helpless and penniless society, is neither humane nor just, nor consistent with the fundamental principles of American policy, nor required by anything but conformity to a vain, visionary, impracticable, and theoretical scheme of social reform.

The author, in effect, calls us false in our attachment to American principles, for not contending for the abolition of hereditary property; and calls for social equality. We go farther, and demand equality in every respect, so far as society is concerned; for to this extent goeth the obligation of government to us as citizens. But is the due weight of the obligation carried in the maxim, "all men are born free and equal," correctly estimated by him? Construe this as you please, there are but two respects, in which we are equal; 1. As children of the same universal parent; 2. As citizens of the same government.

In the former relation, the requirements of God from each are universal, and the same; the same equal laws are set to the conduct of men. The same reward for obedience, the same punishment for disobedience; the same motives to virtue, the same ratio in distributing its rewards. Here is no

monopoly of the sources of virtue, no unequal privilege, no on unjust restraint, no requirement from each, that will not, on the whole, be found to bear with equal pressure on the interests of universal humanity. As subjects of such a government, implied in the idea of religion, all are equal without immunity or privilege; but in all else, as individuals, how different in their chances and capacities to rise as high or sink as low as they please, each enjoying the same equal laws.

And what is the effect of this perfectly equal government on the characters of men? Does it make them equally good? Probably the differences in the moral condition of men under these perfectly just and equal laws, are hardly less striking than the inequality of worldly condition under human government.

Our government, in principle, professes to recognise no difference between men, considered simply as subjects. If, in practice, it be ever unequal in its favor to any, as citizens, and appear to forsake this principle of equality, we have a right to call for a justification, and require it to be shown, that the departure, in a particular case, was necessary, or required, upon the same reasons, that uphold the principle itself.

And how stands the fact, in reference to our country? We do not attempt to teach one of the professed leading representatives of the American system the wisdom and policy of our laws, or to justify all the fundamental measures of government. But have we not a right to call upon the author to specify an instance of the adoption of professedly unequal measures, not explained by circumtances, nor attempted to be justified on principle? Hardly any measure could be expected, (for it must have its portion of error,) to apportion with perfect equality its benefits and burdens to each citizen or every class of the community; but its evils have always been attempted to be justified, and the obligations of perfect equality on society discharged as nearly as possible.

Has our government been partial in its protection? Has it ever failed to nerve the arm of the weakest man with the strength of the community, in defence of his property and liberties? Has it, to any individual, closed any of the avenues to fame, to fortune, to honorable distinction, in every

variety of situation, pursuit, and calling in life? Have the sources of wealth and public honors been impaired, diminished, or monopolized? or are our prospects of success in all these respects fairer now than at any former period? Has it, by unequal favor to one branch of industry, dampened the ardor of any other? There may be some apparent cases of this; but on close examination they will be found to rest on principle. An instance occurred, at an early period in our history, when Congress laid a duty of a few cents per pound on cotton imported into this country, with a view to encourage the growth of that commodity at the South. This aid enabled Southern planters to compete with foreign growers and importers in the northern market, and amounted to a tax, on the Northern manufacturers, paid to the Southern planters for their own exclusive good, equal to the difference in the price of their supplies before and after the duty was laid. This was an instance of unequal favor to the northern and southern interests, but pretended to be justified by the general utility of encouraging the home-growth of the commodity, which is sufficient to free the government from the charge of wilful deviation from the maxim of equal favor. For the same reasons, (and not merely for a tax to defray the expenses of government,) was laid a tax on English imported cloths. This was advancing the northern manufacturing interest, at the heavy expense of every other interest of the community; for, with our very unequal advantages for manufactures, it required an enormous, and it may be an unnecessary, expense, to enable our home manufacturers to compete with the English in the market. So, in numerous instances, government has not, even so far as it was concerned, dealt equally with us as possessing each the right to sell and purchase of whom we please, in order to turn industry to the best possible account. But, in every instance, the deviation from the maxim of equality, was on principles admitted by the majority, which are sufficient to remove all imputation of government's wilfully intending inequality.

As respects privilege, in the sense of exclusive right to monopoly in any branch of industry or enterprise, or in the sense of inequality of rights, between the highest and lowest subject, this, I suppose, no one will pretend to say has an existence in this country.

We need not further vindicate the equality, wisdom, and justice of the fundamental measures of our government; for our system of jurisprudence needs not our praise; and can suffer nothing from our censure. It should, however, be observed, that in one instance in our history, the author's system of equal distribution seems to have become obligatory on government; and this from the peculiar circumstances of the case. I allude to the distribution of the surplus revenue. Without questioning here the wisdom and policy of the foreign or domestic regulations, which occasioned the existence of this fund, let it suffice to say, that government acquired its possession of it by an indirect tax on the people themselves. What, then, were the obligations of government to each citizen, in reference to this money, and how could it discharge them? Evidently, it could discharge them only by adopting something like the author's scheme; and so, in fact, it did, in distributing the money in equal proportions to each of the states, that they might dispose of it to each of their citizens, on some equitable principle of distributive justice.

Thus our government, as far as concerns her, and is in her power, always treats us as equals; and this end it endeavors to attain by the best methods it can devise.

One more objection of the author, which is of great importance, deserves to be considered at some length; and its refutation will tend to show the uniform, faithful, and consistent adherence of our government to its fundamental principles.

Government is charged with inconsistency in its policy, for not going the length of its professed principle. For, says the author, "Why stop with hereditary property? Why not have hereditary magistrates, hereditary professors, hereditary priests, hereditary legislators, hereditary governors, and an hereditary president? Hereditary distinction, that is, distinction founded on birth, once admitted as just in principle, we cannot see how you can consistently stop, without pushing it to its last consequences." Then he insists on the obligation of society to furnish equal chances; which is a civil duty quite beyond our comprehension.

Now we deny that government does, in fact, strictly speaking, recognise any distinction founded on birth. Nor

need we say, that merit or demerit, from its very nature, is incapable of appropriation or bequest. And property, as we have seen, does not descend by virtue of birth, but by virtue of the right of property itself, and the owner's qualified right to appropriate it to any use, and to transfer to whom he pleases. True it is, that parental affection, which generally incites to its accumulation, dictates to whom the property shall descend, and in what proportions it shall be shared among the donees. These parental ties determine, usually, the intentions of the owner in reference to the disposition of his possessions; and such intentions civil government, under the above limitations, is bound to recognise and execute, when they are expressed; and when not expressed, nor clearly evidenced, the nearest possible approximation should be made towards effecting his reasonably supposed intentions. And so government does, in securing the property to the heir, and to the next of kin. Such an appropriation, as above shown, does not, *per se*, amount to an injury to others, nor is it allowed to injure any one in its consequences.

The author's analogy between hereditary property and hereditary magistracies, or titles of honor, is indeed above or below our comprehension, and stands but poorly the test of analysis; for one of the things compared is not only wholly wanting in what is essential to the other, but in every one of its incidents and qualities. Yet some point of coincidence would be required, in order to justify our regulating both by the same principles. Can civil authority be appropriated like property; for instance, the executive, legislative, and judicial powers? Certainly not. For with us it is an admitted maxim, that the only fountain of civil authority is the people now living. They delegate it to their servants in such proportions as they please. This property, (if that be called its name,) cannot be held in severalty, like our estates; nor can it confer such rights on the possessor. The people themselves, being unable to control posterity, and having but a life estate as joint tenants, those who hold of them can, of course, only be tenants at will, or at best for years. Such a precarious tenure, on which the servant of the public must hold his trust, affords a most effectual guard against the abuse of power. But the right of property implies the right to abuse it.

Again. All civil authority in the magistrate is delegated; it is also a personal trust. Now a personal trust can never be alienated, nor even executed, by an agent, much less can it be bequeathed; but an unlimited power of alienation is an inseparable incident to absolute ownership of property. The exercise of civil authority is a control over others; but the dominion over property is confined to the subject-matter, without necessarily affecting the rights of others. And what is very important, the source of civil authority is necessarily limited; the people need but so many servants to exercise all the functions of government; and by consequence, the privilege, (if so it may be called,) of occupying public places of trust and honor, cannot be confined to any class of community, without, *per se*, occasioning an injury to others; for each must be allowed free and equal scope to attain whatever elevation or condition in life, his capacity and inclination may enable him to attain; and no laudable object of ambition should be placed above the grasp of any citizen. Now these reasons do not apply in the case of hereditary property. The means of enriching one's self, so far from being diminished, are actually increased with the increase of riches. We confess, therefore, our inability to see the least analogy between the case of hereditary property and hereditary magistracy, or civil authority; nor can we perceive the least reason in the world, why in consistency the American policy requires the same rules to be applied to both. We go farther; for, from their opposite natures, the same reasons why the adoption of one is obligatory on government, are conclusive against the adoption of the other.

What is here said of the civil magistrate, applies with redoubled force to all superintendents of education, and religious functionaries. The American policy, therefore, in not making these distinctions hereditary, proceeds on the same foundations, that it does in guarding and upholding hereditary property.

Again, the author says, (and we know not that the institution can withstand his logic,) "hereditary property is either a privilege, or it is not." This is very true of everything. "If it is not a privilege, if it confers no social advantages on him who possesses it, then there can be no harm in seeking to abolish it; for what we propose to abolish is declared to be valueless." Valueless? By no means. Hereditary

property confers no privilege or social advantage, in the sense of unequal favor of government; but it does confer all the advantages inherent in the right of property; and this prevents the thing which it is proposed to abolish from being valueless. Such reasoning can do but little honor to a professed logician.

We cannot dismiss this subject without noticing an opinion entertained with great assurance by the author. It is a political dogma, that long shipwrecked English or European legislation. It arises in a great ignorance of the real sources of the production of wealth. It supposes, in the case of nations as well as individuals, that the success and prosperity of the one hangs on the precarious tenure of humiliating and impoverishing the other. But this opinion has long since passed away, and now forms no ingredient in the policy of any enlightened nation. We were, therefore, not a little surprised at finding an individual, who professes not only to be up with the age, but even ahead of it in his doctrines, assert an opinion to the following effect; "Under the present constitution of property," says the author, "we have shown, when treating of the condition of the proletaries, that the individuals from this class rise only by using the class itself as the lever of their elevation; consequently, all individuals of the class cannot possibly rise."

Now, to show that the elevation of one individual does not involve the humiliation of another, or that the property of one community is not the necessary condition of the wealth of another, is neither consistent with our limits, nor, indeed, needed. For it is the triumph of modern times, and the future hope of commerce, that these facts have been admitted, on all hands, for about a century. They have been repeatedly verified in the practice of every country, and clearly pointed out and illustrated by many, who have written on the science of production.

We will, therefore, simply state the fact, but regret the necessity of doing it to a modern popular leader, that there is nothing in the source, production, and real nature of wealth, as at present constituted, to prevent the possiblity, and, (but for other causes inherent in the diversities of capacities and natural and acquired advantages,) even a high degree of probability, of each individual in our community honestly accumulating the present value of one

hundred thousand dollars. This would be perfectly consistent with the nature of wealth, as at present constituted, but highly improbable, from other reasons. The commercial world, at present, does not require to be admonished of the folly of different nations attempting to enrich themselves by plundering each other. On the contrary, sad experience has taught them to rest their hopes in mutually advancing each other's welfare. It is universally admitted, that England, for instance, has profited immensely by the independence and prosperity of America; and that the surest road to wealth for each nation is, to begin by enlightening the policy and encouraging the wealth and prosperity of all its commercial neighbors. And, to apply the same reasoning to the case of the different classes of the community. If, at this day, we were required to devise the best possible method to elevate and enrich still more the capitalists, we would, surely, endeavor to do it, by a plan to elevate and enrich the proletaries; so mutual is the welfare and prosperity of all classes of the community. The relative proportion contributed by each individual in the service of production, by virtue of his natural or acquired advantages, and consequently the comparative amounts of their respective claims to the proceeds, are matters evidently but poorly understood by the author; for his language on this subject seems to indicate his assent to political maxims, that have long been exploded; and to give a sanction to doctrines, that have been for half a century retreating before the advance of the science of political economy. The idea that some one must ultimately be cheated in every useful transaction between man and man, has had but little other effect than to make individuals watchful, and suspicious of each other, and to impose restraints on the freedom of commercial intercourse, by which wealth might be indefinitely increased, and the wants of all the better provided for. But a little knowledge of the true sources of wealth, especially of production and commerce, or exchange of commodities differing in kind, removes most of the apparently startling objections, which are so zealously urged as opposing the interests of the laborer. Such knowledge would enable us to perceive, that the natural result of every useful enterprise, in which individuals or communities engage, is to benefit all the parties

concerned. And no useful enterprise necessarily implies any injury to any one.

The last subject of the author's complaint, which we shall notice, is the striking fact, that "the number of the proletaries is everywhere on the increase;" and this, with almost everything else, is set down to the account of the present constitution of property. But the real cause of this is discovered to us by the knowledge of a science, of which we ought not to suspect the author to be ignorant. We mean, (if such the settled and admitted doctrines of many that have investigated the subject, may be called,) the science of population. This science has demonstrated, as fundamental facts, verified by experience, that population will always keep pace with the means of subsistence; and that the tendency to propagate is far greater in the lower than in the upper classes; and this for various reasons.

1. The ideas entertained in the upper and lower classes of what is necessary to the comfortable subsistence or support of a family, are very different. This circumstance greatly affects the comparative frequency of marriages, in the two classes, and the consequent propagation of numbers in each.

2. In almost every instance of marriage in the upper classes, there is required a rare combination of circumstances; — for instance, comparative equality of condition, fame, fortune, and a thousand artificial distinctions; and all the means of offspring realizing their lofty notions of life. Marriage is here regarded, in practice, as a matter of expediency, a union of fortunes and judicious settlements; and by consequence, it is often postponed till that period of life when the passions lose much of their influence, and all the romance of life is passed away; though there may be some instances, as all should be, where it is induced by nothing but the substantial merits and personal qualifications of the parties. And in such instances, the domestic relations are productive of as much happiness, and the parties are usually as faithful, as they are in the humbler walks of life.

Now none of these considerations affect marriages in the lower classes, where the supposed necessary requisites consist merely of the means of subsistence; and where one dollar per day answers well enough for the support of husband, wife, and some half dozen pledges of affection; whose